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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/774,188

03/20/2001

Gunther Sawatzki

REF/SAWATZKI

3636

7590

07/05/2006

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EXAMINER

OH, SIMON J

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,188

Applicant(s)

SAWATZKI ET AL.

Examiner

Simon J. Oh

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Papers Received

Receipt is acknowledged of the applicant's amendment, response, petition for extension of time, and request for continued examination, all received on 06 June 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 14-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. in view of Paul are rendered moot with the cancellation of those claims.

Claims 36-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtsuki *et al.* (PCT Publication No. WO 98/15196) For the sake of convenience, all references will be made to an English-language equivalent, U.S. Patent No. 6,197,758.

The Ohtsuki *et al.* reference teaches compositions comprising oligosaccharides (See Abstract). Suitable saccharides include fructo-oligosaccharides and galacto-oligosaccharides (See Column 3, Lines 4-22). In one form, mixtures of oligosaccharides may be used to embody the invention (See Column 3, Lines 31-36). Carbohydrates, sugar alcohols, and other components such as minerals may also be included in the disclosed compositions (See Column 3, Line 37 to Column 4, Line 25; and Examples).

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Although the prior art is silent with respect to precise ratios of one oligosaccharide to another, it is the position of the examiner that it is well within the purview of one of ordinary skill in the art to optimize compositions of the prior art through routine experimentation. Regarding Claim 47, this composition claim is largely drawn to a future intended use of the instantly claimed invention. As such, the examiner does not give the claim patentable weight. As the prior art has broadly disclosed the primary components of the instantly claimed invention, it is the position of the examiner that the instantly claimed invention is made obvious by the prior art. Thus, the instantly claimed invention is *prima facie* obvious.

Response to Arguments

Applicant's arguments filed 06 June 2006 have been fully considered but they are moot in view of the new grounds for rejection detailed above.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

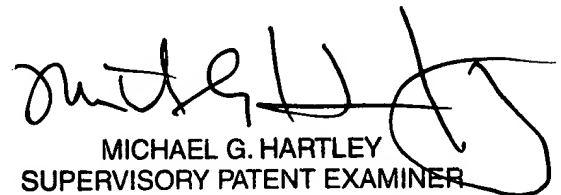
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh
Examiner
Art Unit 1618

sj0



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER